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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80 -

DAVID WENDELL RUGGLES,

Petitioner,

- against -

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE

STATE OF CALIFORNIA

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NO. 80 -

DAVID WENDELL RUGGLES,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

TO: THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT

Petitioner, DAVID WENDELL RUGGLES, respectfully requests that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California, which denied a Petition for Hearing from the judgment of the Court of Appeal of the State of California, Second Appellate District, affirming petitioner's conviction for robbery and possession of a firearm by an ex felon.

OPINION BELOW

The Supreme Court of the State of California denied Petitioner's Petition for Hearing by postcard (Annexed hereto as Appendix A). There is no other written opinion from the California Supreme Court. The Court of Appeal of the State of California, Second Appellate District (Hanson, J.) rendered a written opinion, which has not been published, annexed hereto as Appendix B.

JURISDICTION

The judgment of the Supreme Court of the State of California was entered on August 13, 1980, and is annexed hereto as Appendix A.

The federal question was raised for the first time when petitioner, represented by appointed counsel, made a timely motion to suppress certain evidence seized at the time of petitioner's arrest. The question was preserved on appeal to the Court of Appeal and Supreme Court of the State of California.

No application for an extension of time to file this petition has been sought.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1257(3).

QUESTION PRESENTED

Was the warrantless search of petitioner's briefcase, while it was under the exclusive control of the police, invalid thereby necessitating the granting of petitioner's motion to suppress?

STATEMENT OF THE CASE

Petitioner, DAVID WENDELL RUGGLES, was arrested on January 3, 1979, and charged in a two-count information with robbery and use of a weapon, and with possession of a firearm by an ex-felon. The information subsequently was amended to reflect six prior convictions. Petitioner was arraigned on the original charges on February 5, 1979 after private counsel was appointed to represent him, and on the priors on February 27, 1979, entering pleas of not guilty

and denying the priors. (Clerk's Transcript on Appeal at 1-7).

Defense counsel filed a motion to suppress, and a hearing on the motion was held on March 29, 1979. Following testimony and oral argument, the motion was denied (Clerk's Transcript at 20), whereupon petitioner was permitted to change his earlier plea to guilty on the first count of the amended information (robbery and use of a weapon), and to admit three prior felony convictions. On motion of the district attorney, the additional counts of the information were dismissed (Clerk's Transcript at 21-22).

Defendant's plea was accepted by the court and thereupon, he was sentenced to a term in the state prison for a total of nine years less a credit for 85 days already spent in custody.

On appeal to the Court of Appeal of the State of California, petitioner raised several points in support of reversal including the issue of unlawful search preserved here, citing the decision of the California Supreme Court in People v. Minjares, 24 Cal. 3d 410, cert. denied, 434 U.S. 998 (1979), and the decision of this Court in Arkansas v. Sanders, 442 U.S. 753 (1979). The appellate court concluded that there had been no unconstitutional search (Appendix B at 10-13), citing extensively from the dissenting opinion in Sanders. A Petition for Hearing filed in the Supreme Court of the State of California was denied on August 13, 1980.

STATEMENT OF FACTS

In late November, 1978, Sergeant Morosky of the Los Angeles Police Department Intelligence Division received information from an informant that petitioner had participated

in several armed robberies in and around the City of Los Angeles (Reporter's Transcript on Appeal at 11-12). Sergeant Morosky promptly communicated this information to Officer Robert G. McSeveney who was assigned to the Robbery-Homicide Division of the Los Angeles Police Department (Reporter's Transcript at 10-11). Officer McSeveney was also informed that petitioner was a parolee, had been in prison for armed robbery, was currently living in San Pedro, and drove a black over red Mercury Montego. Officer McSeveney also was given a physical description of the defendant. The information regarding defendant's prior criminal record and his description was verified by the Records Identification Division.

During the initial conversation between the officers, Sergeant Morosky revealed that his informant had suggested that petitioner may have been involved in a recent motel robbery in the City of Los Angeles, that he had been accompanied by another unidentified male, and that petitioner had used a blue steel automatic handgun and handcuffs during the robbery (Reporter's Transcript at 13-14).

Further investigation by Officer McSeveney alerted him to a July 1978 robbery of the Nutel Motel in the City of Los Angeles. After obtaining a booking photograph and a driver's license photograph of the petitioner, the officer constructed a show-up card with the petitioner's photograph, and showed the photo display to the victim of the robbery (Mr. Carragher), and to two female employees of the motel (Reporter's Transcript at 14-15, 30). Mr. Carragher stated that defendant's photograph "strongly resembled" the robber (Reporter's Transcript at 18), but the other witnesses were

unable to identify the petitioner (Reporter's Transcript at 31).

On the basis of Mr. Carragher's statement, Officer McSeveney believed that he had probable cause to arrest petitioner for the robbery, but made no attempt to secure an arrest warrant or to effect an arrest because he hoped petitioner might lead police officers to the second suspect (Reporter's Transcript at 18-19).

On January 2, 1979, Sergeant Morosky told Officer McSeveney that his informant had reported that petitioner was preparing to commit a major robbery, probably the following day, that petitioner would meet an accomplice about 8:00 a.m. the next day on Reseda Boulevard near the Ventura Freeway, and that the two suspects were going to rob a jewelry store possibly in Santa Barbara. The informant was reported to have indicated that two handguns would be used, a blue steel automatic and another gun, that petitioner normally carried one gun in the small of his back and would probably have the second weapon in a briefcase or a satchel with him (Reporter's Transcript at 23-24).

Officer McSeveney communicated this information to the surveillance unit, and also told the surveillance officers that petitioner had multiple prior felony convictions. He instructed the officers to stop and arrest petitioner if it appeared that he was leaving Los Angeles County (Reporter's Transcript at 24, 27).

On January 3, 1979, at about 7:00 a.m., officers from the surveillance unit assembled in the vicinity of Reseda Boulevard and the Ventura Freeway. Present were at least ten plain-clothes officers in five or six unmarked police vehicles, and one marked police car, as well as a

police helicopter (Reporter's Transcript at 41-42, 54-55).

Officer Brooks observed petitioner's vehicle as it exited from the Ventura Freeway at Reseda Boulevard and proceeded to an apartment complex. Petitioner exited his vehicle, looked up and down the street, walked to the trunk of his car, opened the trunk, and removed a brown attache case (Reporter's Transcript at 42-43). Petitioner entered the apartment complex with the briefcase, and returned alone approximately fifteen minutes later. He walked back to his car, replaced the attache case in the trunk of the car, drove back to the freeway after stopping briefly at a gas station, and headed west on the Ventura Freeway in the number one lane (Reporter's Transcript at 43-44).

All of the surveillance followed petitioner's car, and when it appeared that petitioner was leaving the county, the marked police car pulled in behind petitioner's vehicle and activated its lights whereupon petitioner pulled off the road to the center divider. One of the unmarked vehicles pulled over in front of petitioner's car; the other police units pulled in behind the marked police car. The helicopter circled overhead (Reporter's Transcript at 45).

Petitioner exited his vehicle and began walking back to the marked police car. Three or four of the officers pointed handguns at the petitioner, and at least one other officer levelled a shotgun in his direction. Petitioner was ordered to raise his hands and then to lie facedown on the center divider. Petitioner's hands were handcuffed behind his back, he was patted down for weapons, and he was placed under arrest. No weapons had been found on Petitioner's person. He was pulled to his feet and stood up against the center divider

fence (Reporter's Transcript at 46-62).

One of the officers saw a syringe and needle with two labeled vials and a large container with tinfoil around it on the back seat of petitioner's car. On the front seat was a police scanner. The officer walked up to the petitioner and took the car keys. The officer opened the car trunk, removed the attache case, and opened it. Inside the attache case was another brown leather bag similar to a shaving kit. One of the guns was found inside this bag when it was opened; the second handgun was also found in the attache case with ammunition, a holster, a sap, handcuffs, and other objects (Reporter's Transcript at 48-53, 65-67).

The prosecution stipulated that no arrest warrant or search warrant had been obtained prior the the arrest and search of defendant, his vehicle, and its contents (Reporter's Transcript at 4).

REASONS FOR GRANTING THE WRIT

A. THE WARRANTLESS SEARCH OF THE ATTACHE CASE FOUND IN THE TRUNK OF PETITIONER'S CAR WAS A VIOLATION OF PETITIONER'S REASONABLE EXPECTATION OF PRIVACY AND OF HIS RIGHT TO BE FREE FROM WARRANTLESS SEARCHES GUARANTEED BY THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

B. THERE WERE NO EXIGENT CIRCUMSTANCES TO JUSTIFY THE WARRANTLESS SEARCH OF THE ATTACHE CASE BECAUSE IT WAS IN THE EXCLUSIVE CUSTODY OF THE POLICE OFFICERS.

The Fourth Amendment to the United States Constitution, made applicable to the states, provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, support by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

This Court has held that "Searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S. 347, 357 (1967); Arkansas v. Sanders, 442 U.S. 753, 758 (1979). Two preconditions must be established to justify a warrantless search, probable cause and exigent circumstances. Carroll v. United States, 267 U.S. 132 (1925); Coolidge v. New Hampshire, 403 U.S. 443 (1971).

The issue in the instant case is simple in light of the decisions of this Court. Petitioner concedes that at the time of his arrest, there was probable cause to believe that his vehicle, and specifically the attache case in the trunk of his car, contained evidence of a crime. Petitioner contends, however, that the search of the attache case found in the trunk was unreasonable because it was conducted without a warrant and because there were no exigent circumstances to justify a warrantless search. In support of this position it is necessary to discuss only one case because that case is totally indistinguishable from the case now confronting the Court.

The Court will recall that in Arkansas v. Sanders, 442 U.S. 753 (1979), police officers had received a tip from an informant that the defendant therein would arrive at the Municipal Airport that afternoon at 4:35 p.m., carrying a green suitcase from the baggage claim area containing marijuana. The defendant was known both to the informant and to the police officer to whom the information had been communicated. Surveillance was set up at the airport, and when defendant arrived he was observed as he claimed a green suitcase from the baggage claim area and transferred the suitcase

to the trunk of an awaiting taxicab. As the taxi drove off the officers gave pursuit and stopped the vehicle. The driver opened the trunk at the request of the officers; the officers thereupon removed and opened the unlocked suitcase and found ten plastic bags of marijuana. At trial the evidence was admitted over defendant's objection. This Court held that the evidence should have been suppressed because, although probable cause existed to believe the suitcase contained contraband, there was no showing of any exigent circumstance to justify the warrantless intrusion. The Sanders majority noted:

> The police acted properly -- indeed commendably -- in apprehending respondent and his luggage. They had ample probable cause to believe that respondent's green suitcase contained marihuana. A previously reliable informant had provided a detailed account of respondent's expected arrival at the Little Rock Airport, which account proved to be accurate in every detail, including the color of the suitcase in which respondent would be carrying the marihuana. Having probable cause to believe that contraband was being driven away in the taxi, the police were justified in stopping the vehicle, searching it on the spot, and seizing the suitcase they suspected contained contraband.

442 U.S. at 761.

However, the Court continued, "the mere reasonableness of a search, assessed in the light of the surrounding circumstances, is not a substitute for the judicial warrant required under the Fourth Amendment." Id. at 758. The Court reaffirmed that "The warrant requirement ... is not an inconvenience to be somehow 'weighed' against the claims of police efficiency." Id. quoting Coolidge v. New Hampshire, 403 U.S. at 481.

In United States v. Chadwick, 433 U.S. 1 (1977), the Court had held that there is a legitimate expectation of privacy in the contents of a suitcase accompanying a person

that is not diminished simply because the person is arrested in public. In Sanders, the Court concluded that the same expectation exists when the suitcase is removed from the trunk of a car.

> A closed suitcase in the trunk of an automobile may be as mobile as the vehicle in which it rides. But as we noted in Chadwick, the exigency of mobility must be assessed at the point immediately before the search -- after the police have seized the object to be searched and have it securely within their control.... Once police have seized a suitcase, as they did here, the extent of its mobility is in no way affected by the place from which it was taken. Accordingly, as a general rule there is no greater need for warrantless searches of luggage taken from automobiles than of luggage taken from other places.
>
> Similarly, a suitcase taken from an automobile stopped on the highway is not necessarily attended by any lesser expectation of privacy than is associated with luggage taken from other locations. One is not less inclined to place private, personal possessions in a suitcase merely because the suitcase is to be carried in an automobile rather than transported by other means or temporarily checked or stored. Indeed, the very purpose of a suitcase is to serve as a repository for personal items when one wishes to transport them. Accordingly, the reasons for not requiring a warrant for the search of an automobile do not apply to searches of personal luggage taken by police from automobiles. We therefore find no justification for the extension of Carroll and its progeny to the warrantless search of one's personal luggage merely because it was located in an automobile lawfully stopped by the police.

442 U.S. at 763-65 (emphasis added; footnotes omitted).

In the instant case, police officers had been informed that petitioner would be at a particular place at a particular time, and that he would be carrying an attache case containing a gun. Surveillance was set up and when petitioner arrived he was observed removing an attache case from the trunk of his car and then replacing the case in the trunk. Shortly thereafter petitioner was stopped on the highway and placed under arrest.

Petitioner was handcuffed in the presence of at least ten armed police officers in six or seven vehicles with a police helicopter circling overhead. Under these circumstances one of the officers opened the trunk to petitioner's car, removed the attache case, and searched it. As in Sanders, there can be no question that the attache case was in the exclusive custody and control of the police officers when it was searched. Accordingly, no exigent circumstances were present, and a warrant should have been obtained before a search was undertaken.

Nevertheless, the state court held that the search of the attache case was justified because "the luggage, like the car itself, constituted a fleeting target," and "since the police already had probable cause to search the attache case, a warrant would have been routinely forthcoming." Exhibit B at 14. The state court continued, suggesting that there is "no logical distinction between searching a trunk and searching luggage found in the trunk, since there is no reason for greater expectation of privacy." Id. t 15, citing Sanders, 442 U.S. at 769 (Blackmun, J., dissenting).

It is clear that the opinion of the state court is nothing less that a blantant refusal to abide by the law announced by this Court. First, a majority of this Court in Sanders rejected the state court's assertion that luggage, like the car from which it is removed, is a fleeting target. Rather, "the exigency of mobility must be assessed at the point immediately before the search -- after the police have seized the object to be searched and have it securely within their control.... Once police have seized a suitcase, as they did here, the extent of its mobility is in no way affected by the place from which it

was taken." 442 U.S. at 763 (emphasis added, footnotes omitted).

Next, the notion that a warrant would be routinely forthcoming does not extinguish the protections accorded by the Fourth Amendment. "The mere reasonableness of a search ... is not a substitute for the judicial warrant required under the Fourth Amendment." Id. at 758. Furthermore as the Sanders majority noted:

> It is beyond question that the police easily could have obtained a warrant to search respondent's bag if they had taken the suitcase to a magistrate. They had probable cause to believe not only that respondent was carrying marihuana, but also that the contraband was contained in the suitcase that they seized. The State argues that under the circumstances of this case inconvenience to all concerned would have been the only result of deferring search of the suitcase until a warrant was obtained. Those in respondent's position who find such inconvenience unacceptable may avoid it simply by consenting to the search.

Id. at 764 n.12.

Finally, concerning the state court's contention that there is "no logical distinction between searching a trunk and searching luggage found in the trunk," the Sanders majority concluded that

> insofar as the police are entitled to search such luggage without a warrant, their actions must be justified under some exception to the warrant requirement other than that applicable to automobiles stopped on the highway. Where -- as in the present case -- the police, without endangering themselves or risking loss of the evidence, lawfully have detained one suspected of criminal activity and secured his suitcase, they should delay the search thereof until after judicial approval has been obtained. In this way, constitutional rights of suspects to prior judicial review of searches will be fully protected.

Id. at 766 (emphasis added). Furthermore, "a suitcase taken from an automobile stopped on a highway is not necessarily attended by any lesser expectation of privacy than is associated with luggage taken from other locations." Id. at 764.

Thus, it is manifest that the opinion of the state court is completely without any legal foundation and, indeed, is directly contrary to the decision of this Court in Arkansas v. Sanders.

CONCLUSION

For the above stated reasons, this Court shoud grant petitioner's writ of certiorari and reverse the judgment of the state court.

Respectfully submitted,

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Dated: November 6, 1980
Los Angeles, California

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AUG 13 1969

I have this day filed Order

HEARING DENIED

In re: 2 Crim. *No.* 35011

People

vs.

Ruggles

Respectfully,

Clerk

APPENDIX A

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. DAVID WENDELL RUGGLES, Defendant and Appellant.	2 Crim. No. 35011 (Super. Ct. No. A347889)

COURT OF APPEAL-SECOND DIST.
FILED
JUN 16 1980
CLAY ROBBINS, JR. Clerk
Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County. Ronald M. George, Judge. Affirmed.

Paul W. Grace, under appointment by the Court of Appeal, for Defendant and Appellant.

George Deukmejian, Attorney General, Robert H. Philibosian, Chief Assistant Attorney General, S. Clark Moore, Assistant Attorney General, John R. Gorey and Penina S. Van Gelder, Deputy Attorneys General, for Plaintiff and Respondent.

APPENDIX B

David Wendell Ruggles appeals his conviction, pursuant to guilty plea, on one count of robbery with the use of a firearm in the commission of the offense.

FACTS

Defendant Ruggles was charged in a two count information with (1) robbery (Pen. Code, § 211) alleging use of a firearm in the commission of the offense (Pen. Code, §§ 12022.5, 1203.06) and (2) possession of a firearm by an ex-felon (Pen. Code, § 12021). The information was subsequently amended to reflect six prior convictions and the case was consolidated with a second case in which a single count was charged against defendant Ruggles. Defendant pleaded not guilty, denied the priors and filed a 1538.5 motion to suppress which the trial court denied. Defendant thereupon changed his plea to guilty on the first count of the amended information (robbery and use of a weapon) and he admitted three of the prior felony convictions charged. On motion of the district attorney the second count (possession of a firearm by an ex-felon) and the single count in the second case were dismissed. Probation was denied and defendant was sentenced to state prison for nine years (four years for robbery, a consecutive two year sentence for the admitted use of a firearm, and three consecutive one year terms for the three

admitted prior convictions [Pen. Code, § 667.5, subd. (b)]). The People's motion to dismiss the remaining prior convictions was granted.

Defendant Ruggles has appealed his conviction complaining that the trial court erred in denying his 1538.5 motion to suppress certain evidence obtained from a search of the vehicle he was driving at the time of his arrest. The record includes certain portions of the preliminary hearing transcript which trial court considered pursuant to stipulation.

In July 1978 there was a robbery at the Nutel Motel and Ruggles, who was identified by Mr. John Carragher, the manager, was subsequently apprehended by police officers on suspicion of this crime. Defendant's arrest came about as the result of an investigation by Officer Robert McSeveney of the Los Angeles Police Department.

At the 1538.5 hearing Officer McSeveney testified that in November of 1978 he received information from Sergeant Morosky that Ruggles had participated in various armed robberies including the robbery with an accomplice of a motel in Los Angeles; that Ruggles was on parole for armed robbery; that he lived in San Pedro and drove a black over red Mercury Montego; and that he was a Caucasian male approximately 39 years old, 6 feet tall and weighed around 200 pounds.

Officer McSeveney verified this information, which was given to Morosky by an informant, by checking various sources including the police department's records which disclosed that in several robberies Ruggles had posed as a law enforcement officer showing a badge. He also learned that a few days before the robbery of the Nutel Motel, Ruggles was seen in the vicinity posing as a law enforcement officer, and the perpetrator of that robbery had shown a badge, represented that he was with some state department, and had used handcuffs on the victim.

McSeveney, who concluded that Ruggles had committed the robbery of the Nutel Motel, obtained defendant's driver's license photograph and constructed a showup card including that photograph among six other pictures. Mr. Carragher, who had clearly seen defendant at least twice before the robbery posing as a narcotics agent, identified the person in the driver's license photograph as the robber. Although the officer believed that he then had probable cause to arrest defendant Ruggles, he refrained because he and other officers were still attempting to identify the second suspect involved in the robbery. Police maintained a helicopter surveillance of defendant Ruggles at his San Pedro residence in an attempt to identify the second suspect.

Finally, on January 2, 1979, Sergeant Morosky told

Officer McSeveney that defendant Ruggles and a partner would commit a major robbery probably the next day. The defendant was to meet his partner at 8 a.m. on Reseda Boulevard in the San Fernando Valley and they would then proceed to rob a jewelry store possibly in Santa Barbara. The informant said two handguns would be used, one of them a blue steel automatic, and that Ruggles would probably carry one weapon in the small of his back and the second weapon in a briefcase. Officer McSeveney conveyed this information to the surveillance team and also told them that the defendant had been involved in a shoot out in Orange County, that he had multiple prior felony convictions and was to be considered armed and dangerous, and that the team should attempt to stop and arrest Ruggles if it appeared he was leaving Los Angeles County.

Officer Brooks of the surveillance team testified that he received the foregoing information together with a description of defendant Ruggles, the car he was driving, and its license number. As Officer Brooks pulled onto Reseda Boulevard on the morning of January 3, 1979, he saw defendant Ruggles' car and followed him. Defendant parked on the north side of Erwin, got out of the car and surveyed the street, then opened the trunk and removed a brown attache case which he took with him into an apartment building complex. About 15 minutes later, defendant Ruggles returned to the car,

surveyed the street again, then opened the trunk and replaced the brown briefcase therein. He closed the trunk, got into the car, drove down Reseda Boulevard toward the freeway, and finally got onto the freeway and turned westbound. The car driven by Officer Brooks and other police surveillance units followed Ruggles until it appeared that he was leaving the county and then the officers decided to stop and arrest him on suspicion of robbery.

A black and white police car with red lights turned on pulled up behind defendant's car when Ruggles stopped his car along the center divider. The police car pulled up directly behind him while Officer Brooks pulled his police car in front of Ruggles' car. Defendant Ruggles immediately got out of his car as other officers carrying guns approached. Defendant complied with their request to raise his hands. He was then ordered to lay down prone, was handcuffed and patted down, and was told that he was under arrest.

As Officer Brooks approached defendant Ruggles, he peered into the vehicle through the open window on the driver's side and saw on the front seat a small hand-held police call scanner. In plain view on the back seat was a syringe and needle and two little vials of the type the officer recognized as those customarily containing narcotics. In the opinion of the officer the syringe and needle were a "hype" kit and the vial and

bottles contained some type of controlled substance. Defendant Ruggles, however, did not appear to be under the influence of drugs or narcotics.

The officer took the car keys from defendant Ruggles' hand and opened the trunk. In the trunk he found a large police call scanner standing next to the brown briefcase. The officer took the unlocked briefcase out of the trunk, opened it and found inside a holster, a sap, handcuffs, some gloves, a flashlight and a bandana together with an unzipped bag similar to a shaving kit. He found another gun in the unzipped bag. The officer also opened a couple of other bags which he found in the trunk and there he found a three foot sledge hammer, miscellaneous clothes and a brown cap. In the trunk there was a raincoat, and some Halloween-type masks with tape over the eye holes, and a scanner company manual entitled "Police Frequencies".

Defendant testified on his own behalf that when he noticed a police car behind him on the freeway that morning he promptly stopped and got out of his car. An officer ordered him to lie down on the ground or he would "blow his fucking head off." When the defendant complied, officers rushed in and grabbed his arms and one of the officers holding a shotgun put his foot on defendant's neck and held him down. While the defendant was still lying down, an officer asked if he could

look in his car but the defendant refused. The officers then took the keys from the defendant's hand and opened the trunk.

ISSUES

Defendant Ruggles contends on appeal (1) that officers did not have probable cause to arrest him; (2) that Officer Brooks did not have sufficient probable cause to conduct a warrantless search of the trunk of his car; and (3) that the search without a warrant of the briefcase was illegal. 1/

DISCUSSION

I

Contrary to defendant's contention, the evidence introduced at the 1538.5 hearing amply supported the trial court's determination that probable cause existed for his arrest without a warrant. In a 1538.5 hearing, the trial court sits as the trier of fact. It is the role of the reviewing court only to measure the facts, as found by the trier, against the constitutional standard of reasonableness. (People v. Lawler (1973) 9 Cal.3d 156, 160.)

Probable cause to arrest without a warrant is based

1/ Although defendant also argues that the trial court correctly concluded that he did not voluntarily consent to the search of the vehicle, and that the plain view observation of narcotics paraphernalia in the car did not justify a trunk search, the People concede these issues and they are therefore not matters for our review.

upon the facts known to the officers at the time of the arrest. (People v. Lara (1967) 67 Cal.2d 365, 373-374.) The standard is whether a man of ordinary care and prudence would be led to believe and conscientiously entertain an honest and strong suspicion that the accused is guilty. (People v. Cockrell (1965) 63 Cal.2d 659, 665.) The information Officer McSeveney obtained in the present case, derived from his investigation and Carragher's photographic identification, established probable cause to arrest Ruggles. After he received a tip that Ruggles might have robbed a Los Angeles motel, Officer McSeveney investigated. As the record discloses he learned that Ruggles during several robberies posed as a law enforcement officer, that Ruggles was seen near the Nutel Motel posing as a law officer, and the robber had flashed a badge.

McSeveney's theory that Ruggles may have been connected with that robbery was substantiated by information he obtained from the employees of the Nutel Motel. Carragher, the motel manager, was present during the commission of the crime and positively identified Ruggles, whom he had met twice before, as one of the two perpetrators of the robbery. He identified defendant less than two weeks thereafter from a photo spread of six men prepared by Officer McSeveney.

As a result of information obtained by McSeveney's

investigation and Carragher's identification of defendant, the police had reasonable cause to believe that Ruggles had participated in the Nutel robbery. Although defendant argues that there was a delay of over a month from the time the officers had probable cause to the time of defendant's arrest, he has presented no facts from which it can be concluded that the probable cause to seize him had gone stale. In view of the fact that the arrest was made in public, the arrest without a warrant is not offensive to defendant's constitutional rights. (United States v. Watson (1976) 423 U.S. 411, 423-424.)

II

Defendant next contends that the search of the trunk of his car at the time of his arrest was invalid.

Searches conducted outside the judicial process are per se unreasonable, subject to a few specific exceptions. (Katz v. United States (1967) 389 U.S. 347, 357.) It is the burden of the People to show that the search falls within one of those exceptions. (People v. Minjares (1979) 24 Cal.3d 410, 416.)

The warrantless search of the trunk of defendant's car in the case at the bench was justified under the "automobile exception" to the warrant requirement. This exception allows the police to conduct a warrantless search of an automobile where there is probable cause, and exigent circumstances make it impracticable for the police to obtain a

warrant. (Chambers v. Moroney (1970) 399 U.S. 42, 48-51.)

The automobile exception is applied where the seizing officer has probable cause that the contents of the automobile offend against the law. (Carroll v. United States (1924) 267 U.S. 132, 155-156, 158-159.) This requirement is satisfied in the case at bench because the evidence disclosed that immediately prior to defendant's arrest the officers received a second tip from the original informant saying that defendant was planning another crime and had two handguns in his possession. Police are entitled to rely on such information when it is shown that both the informant and his information have been reliable. (Aguilar v. Texas (1964) 378 U.S. 108, 114-115.) In the present case police were entitled to conclude that the informant was reliable because McSeveney had by independent investigation established that his first tip to the police was true. Furthermore, the informant's information was shown to be reliable because it was corroborated by other facts, e.g., Ruggles' plan to rendezvous with someone else at an identified location, his plan to commit another robbery, the fact that he would have two guns with him, one of which he would have in a brown attache case.

Information given by an informant is sufficient as a basis for probable cause if it is corroborated by other facts, sources, or circumstances. (People v. Lara, supra, 67 Cal.2d

at 374-375.) The presence of the defendant at the rendezvous location at the correct time, the fact that he was seen taking the brown attache case out of the trunk and later returning it to the trunk, that it appeared he planned to commit a crime in Santa Barbara because he was apprehended driving out of Los Angeles County westbound corroborated the tip in its essential facts. Independent corroboration occurred through the officers' observation of Ruggles' suspicious behavior, continuous surveying of the street while he was removing and carrying the attache case and again when he returned it to the trunk of his car. Such corroboration provided the officers with reasonable grounds to believe that the informant was telling the truth, and probable cause for the police to believe that the attache case in the trunk contained a gun.

Defendant argues, however, that there were no exigent circumstances in this case (Chambers v. Moroney, supra, 399 U.S. at p. 51) because the car was at the time of the search within the exclusive control of the police. Nonetheless, due to the inherent mobility of the automobile various automobile searches have been upheld where no immediate danger was presented. (South Dakota v. Opperman (1976) 428 U.S. 364, 367.) If the police have to take the time to get a warrant to search every car on the highway, they run the risk that the vehicle may be moved

out of the locality or the evidence destroyed. (Carroll v. United States, supra, 267 U.S. at 153.) The fact that the occupants of the automobile have already been arrested does not negate the exigent circumstance. (Chambers v. Moroney, supra, p. 44.)

Despite Ruggles' arrest his car was still a fleeting target, it was on an open highway, and there was a possible confederate waiting to remove the evidence. (Coolidge v. New Hampshire (1971) 403 U.S. 443.) There had been no earlier opportunity to gain a warrant because the car had been under constant police surveillance; and now that it was seized, there was no constitutional difference between searching it or holding it until a warrant could be obtained. (Chambers v. Moroney, supra, 399 U.S. at 52.) Consequently, the search of the trunk of the car without a warrant was valid under the automobile exception.

III

Defendant's final contention is that the officers illegally searched the contents of the briefcase. In the present case in view of the existence of exigent circumstances under the automobile exception and the doctrine of inevitable

discovery (People v. Superior Court (Tunch) (1978) 80 Cal. App.3d 665) the search of Ruggles' luggage without a warrant was valid. The luggage, like the car itself, constituted a fleeting target. It was mobile; it was capable of being easily lost or stolen; and it was in the center of a freeway where "posting a guard" was impractical. In addition, officers had reason to believe the attache case contained a dangerous weapon. The facts of this case are distinguishable from those of the recent Supreme Court cases where the search of luggage was disapproved when it was merely to obtain evidence of the crime committed. (United States v. Chadwick (1977) 433 U.S. 1; People v. Dalton (1979) 24 Cal.3d 850; People v. Minjares, supra, 24 Cal.3d 410.)

In fact, federal courts have upheld the search of luggage under the automobile exception where, for instance, there was probable cause for the search and the suitcase was closely related to the reason for the arrest. (United States v. Tramunti (2d Circ. 1975) 513 F.2d 1087 at 1104; see also United States v. Finnegan (9th Circ. 1977) 568 F.2d 637.)

Finally, under the circumstances of the case at bench obtaining a warrant would be a mere formality. Since the police already had probable cause to search the attache case, a warrant would have been routinely forthcoming. (See

Arkansas v. Sanders (1979) 442 U.S. 753, 770 (dissenting opinion).) Even if a warrant is required, the end result is the same -- the inevitable discovery of the instrumentalities of the crime. Therefore, the doctrine of inevitable discovery permits the evidence to be admitted as an exception since the warrant requirement would not produce the desired effect. (People v. Superior Court (Tunch), supra, 80 Cal.App.3d 665.) In fact, to enforce the warrant requirement would be likely to have an adverse practical effect since it might unjustly grant criminals immunity from prosecution. (See Novikoff, The Inevitable Discovery Exception to the Constitutional Exclusionary Rules (1974) 74 Colum.L.Rev. 88.)

In any event, there is no logical distinction between searching a trunk and searching luggage found in the trunk, since there is no reason for greater expectation of privacy. (Arkansas v. Sanders, supra, 442 U.S. 753, 769 (dissenting opinion).) In the present case, there was no showing of expectation of privacy since although the trunk was locked, the briefcase was in fact unlocked and the shaving kit type bag inside was unzipped. Moreover, once an individual is in police custody and his personal property has been seized, the additional intrusion of a search of luggage is at best only incidental. (Arkansas v. Sanders, supra, p. 770.)

"Where it is shown that a suspect would have been

jailed and thus subject to a booking search, the fact that a thorough search of the booking type occurs prior to the actual booking process does not render the search illegal, since no additional or greater intrusion on the privacy of the suspect is involved. (People v. Barajas, 81 Cal.App.3d 999, 1008-1009; People v. Flores, 100 Cal.App.3d 221, 229-230; see People v. Superior Court (Simon), 7 Cal.3d 186, 208-209; People v. Longwill, 14 Cal.3d 943, 948; People v. Brown, 88 Cap.App.3d 283, 293.)" (People v. Bullwinkle (Apr. 24, 1980, 2 Crim. Nos. 33763 and 34931) ___ Cal.App.3d ___.)

DISPOSITION

In view of the fact that the 1538.5 motion to suppress was properly denied the judgment of conviction is affirmed.

HANSON, J.

We concur:

LILLIE, Acting P.J.

RADIN, J.*

---

* Assigned by the Chairperson of the Judicial Council.

80-5677

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80 -

DAVID WENDELL RUGGLES,

Petitioner,

- against -

STATE OF CALIFORNIA,

Respondent.

APPLICATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

TO: THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT.

Petitioner DAVID WENDELL RUGGLES respectfully seeks leave to proceed here in forma pauperis without payment of fees and costs. Counsel's affidavit in support of this application is annexed.

STEPHEN YAGMAN
Attorney for Petitioner
10880 Wilshire Boulevard
Suite 1900
Los Angeles, California 90024
(213) 475-4988

Los Angeles, California
November 6, 1980

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80 -

DAVID WENDELL RUGGLES,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

AFFIDAVIT OF STEPHEN YAGMAN

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

STEPHEN YAGMAN, being duly sworn, deposes and says:

I am an attorney at law, admitted to practice before this Honorable Court. I make this affidavit in support of the annexed application for leave to proceed here in forma pauperis without payment of fees and costs.

Petitioner was represented at trial in the Superior Court of the State of California for the County of Los Angeles by an attorney appointed by the court because he did not have sufficient funds to retain private counsel. Mr. Paul W. Grace of this office was appointed by the Court of Appeal of the State of California, Second Appellate District, to represent petitioner on appeal because he did not have sufficient funds to retain private counsel. Mr. Grace prepared the brief for petitioner on that appeal as well as a Petition for Hearing in the California Supreme Court which was denied.

I have no further information which would suggest that petitioner's financial status has changed. I have agreed to represent petitioner before this Honorable Court without payment of attorney's fees by petitioner.

WHEREFORE, it is respectfully prayed that petitioner's application for leave to proceed in forma pauperis without payment of fees and costs be granted.

Dated: November 03, 1980

STEPHEN YAGMAN

Subscribed and sworn to before me this 03 day of November, 1980.

NOTARY PUBLIC

OFFICIAL SEAL
MEYER BERKOWITZ
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Exp. May 29, 1982

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80 - 5677

DAVID WENDELL RUGGLES,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

AFFIDAVIT OF DAVID WENDELL RUGGLES

STATE OF CALIFORNIA)
) ss.
COUNTY OF SOLANO)

DAVID WENDELL RUGGLES, being duly sworn, deposes and says:

I am the petitioner in this case. I make this affidavit in support of the annexed application for leave to proceed here in forma pauperis without payment of fees and costs.

I was represented at trial in the Superior Court of the State of California for the County of Los Angeles by counsel appointed by the Court because I did not have sufficient funds to retain private counsel.

I was represented on appeal in the Court of Appeal of the State of California, Second Appellate District, and in the Supreme Court of the State of California, by counsel appointed by the Court of Appeal because I did not have

sufficient funds to retain private counsel.

I am presently incarcerated in the state prison at Vacaville, California, and am unable to obtain funds to pay the fees and costs required by this Court, or to retain private counsel.

WHEREFORE, it is respectfully prayed that this application for leave to proceed here in forma pauperis be granted.

DATED: Nov. 5, 1980

OFFICIAL SEAL
D. G. CAPRIO
NOTARY PUBLIC-CALIFORNIA
Principal Office in SOLANO County
My Commission Expires June 21, 1982

DAVID WENDELL RUGGLES

Subscribed and sworn to before me
this 5th day of Nov., 1980.

D. G. Caprio
NOTARY PUBLIC

Supreme Court, U.S.
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No. 80 - 5677

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

ORIGINAL COPY

DAVID WENDELL RUGGLES,

Petitioner,

- against -

STATE OF CALIFORNIA,

Respondent.

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PETITION FOR CERTIORARI

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No. 80 - 5677

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

DAVID WENDELL RUGGLES,

Petitioner,

- against -

STATE OF CALIFORNIA,

Respondent.

TO: THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT

Petitioner, DAVID WENDELL RUGGLES, filed a motion for leave to proceed in forma pauperis and a petition for certiorari on November 6, 1980. This supplemental memorandum is respectfully submitted in support of the petition for certiorari.

Since the Supreme Court announced its decision in Arkansas v. Sanders, 442 U.S. 753 (1979), federal and state courts throughout the country have attempted to apply the rationale of that decision in a variety of fact situations and with a varying degree of success. An extensive index of published decisions interpreting Sanders follows indicating the pertinent facts of each case and the conclusion of each court as to the admissibility of evidence discovered as the result of a warrantless search.

Most of the decisions have concentrated attention upon whether the defendant had a reasonable expectation of privacy in the parcel subjected to a search, rather than upon whether law enforcement officers had gained exclusive control over the parcel. As a result, application of the Sanders rationale has been inconsistent and often confusing.

Because the instant case presents facts remarkably similar to those involved in Sanders, the Court is presented with a unique opportunity to clarify its earlier decision. Appellant suggests that greater emphasis placed upon whether law enforcement officers have exclusive control of a parcel would lead to more consistent application of the principles of the Fourth Amendment embodied in Sanders.

FEDERAL COURTS

DISTRICT OF COLUMBIA CIRCUIT:

- United States v. Harris, 627 F.2d 474 (D.C. Cir. 1980)(conviction vacated on another issue)

FIRST CIRCUIT:

- United States v. Dall, 608 F.2d 910 (1st Cir. 1979) (pickup truck, evidence admitted, Sanders distinguished -- inventory search)

SECOND CIRCUIT:

- United States v. Dien, 609 F.2d 1038 (2d Cir. 1979), Aff'd on rehearing 615 F.2d 10 (2d Cir. 1980) (cartons in van -- suppressed)
- United States v. Ocampo, 492 F. Supp. 1211 (E.D.N.Y. 1980)(car trunk; taped cardboard box -- suppress, open flight bag and plastic shopping bag partially covered by shirt -- admit)

- United States v. Mannino, 487 F. Supp. 508 (S.D.N.Y. 1980) (sealed boxes - suppress; closed but unsealed boxes and white plastic bag - admit), aff'd, __ F.2d __ (2d Cir 1980)
- United States v. Markland, 489 F. Supp. 932 (D. Conn. 1980) (zippered opaque plastic bag thrown from car by traffic accident - suppress)

THIRD CIRCUIT:

- Milhollan v. United States, 599 F.2d 518 (3d Cir.), cert. denied, 444 U.S. 909 (1979) (Brennan, Marshall, & Powell, J.J., dissenting) (satchel in impounded car -- Sanders distinguished - evidence admitted)

FOURTH CIRCUIT:

- United States v. Presler, 610 F.2d 1206 (4th Cir. 1979) (plastic box and locked briefcase left with friend without key - suppress)

FIFTH CIRCUIT:

- United States v. Rigales, 630 F.2d 364 (5th Cir. 1980) (zippered case in car - suppress)
- United States v. Forrest, 620 F.2d 446 (5th Cir. 1980) (Sanders distinguished -- trailer of semi rig same as automobile; exigent circumstances)
- United States v. Bella, 605 F.2d 160 (5th Cir. 1979) (guitar case and luggage in car - suppress)
- United States v. Miller, 608 F.2d 1089 (5th Cir. 1979) (plastic portfolio behind driver's seat - suppress) -- cert. denied, 100 S. Ct. 3020 (1980)
- United States v. Morris, 491 F. Supp. 222 (S.D. Ga. 1980) (Sanders distinguished -- if proper search warrant for search of home, no additional warrant needed to search jewelry box found therein)

SIXTH CIRCUIT:

- United States v. Calandra, 605 F.2d 236 (6th Cir. 1979) (Chadwick held not retroactive; hand carried briefcase)
- United States v. Rivers, 486 F. Supp. 1025 (N.D. Tex. 1980) (heavy plastic garbage bags in vehicle - suppress)
- United States v. Hartman, 627 F.2d 7 (6th Cir. 1980) (suitcase in car - suppress)

SEVENTH CIRCUIT:

- United States v. Garcia, 605 F.2d 349 (7th Cir. 1979), cert. denied, 100 S. Ct. 2966 (1980) (Sanders distinguished -- hand carried luggage, incident to arrest - admit)
- United States v. Bulgier, 618 F.2d 472 (7th Cir. 1980) (Sanders distinguished -- private search of package by airline in course of normal procedures followed by controlled delivery - admit)
- United States v. White, 607 F.2d 203 (7th Cir. 1979) (attache case in car -- evidence supported possibility that gun had been thrown from car; immediate search of briefcase deemed necessary to determine whether more extensive search for gun along road might be necessary to safeguard public - admit)

NINTH CIRCUIT:

- United States v. Mackey, 626 F.2d 684 (9th Cir. 1980) (paper bag under car seat - admit)
- United States v. MacKay, 606 F.2d 264 (9th Cir. 1979) (suitcase in car trunk - suppress)

- Moran v. Morris, 478 F. Supp. 145 (C.D. Cal. 1979) (briefcase in shed - suppress (dicta))
- United States v. Passaro, 624 F.2d 938 (9th Cir. 1980) (Sanders distinguished -- wallet taken from person at time of arrest - admit)

TENTH CIRCUIT:

- United States v. Kralik, 611 F.2d 343 (10th Cir. 1979) (Sanders distinguished -- no additional warrant necessary to search suitcase found in car searched pursuant to valid warrant)
- United States v. Andrews, 618 F.2d 646 (10th Cir. 1980) (Sanders distinguished -- sealed package searched by airline personnel followed by controlled delivery - admit)
- United States v. Rengifo-Castro, 620 F.2d 230 (10th Cir. 1980) (suitcase in car - suppress)
- United States v. Meier, 602 F.2d 253 (10th Cir. 1979) (backpack in car - suppress)
- United States v. Gooch, 603 F.2d 122 (10th Cir. 1979) (briefcase aboard aircraft - suppress (dicta))

STATE COURTS

ALABAMA:

- Reid v. State, 388 So. 2d 208 (Ala. 1980) (toolbox affixed to body of pickup truck not otherwise immobilized - admit)

ARIZONA:

- State v. Crutchfield, 123 Ariz. 570, 601 P.2d 333 (1979) (Chadwick case -- suitcase in possession of defendant at airport - suppress)

ARKANSAS:

- Moore v. State, 594 S.W.2d 245 (Ark. 1980) (shaving kit in car - suppress)
- Daigger v. State, 595 S.W.2d 653 (Ark. 1980) (purse between two front seats of car - admit)

CALIFORNIA:

- People v. Yuna, 80 Daily Journal D.A.R. 3186 (C.A. 1st, Nov. 26, 1980) (jacket on back seat of car - suppress)
- California v. Robbins, 103 Cal. App. 3d 34, 162 Cal. Rptr. 780 (1980) (green plastic-wrapped blocks in car -- Sanders distinguished - readily identifiable by trained officers as marijuana - admit); petition for cert. filed, July 29, 1980 (80-148)
- California v. Musante, 102 Cal. App. 3d 156, 162 Cal. Rptr. 158, cert. denied, 49 U.S.L.W. 3282 (No. 79-1909, Oct. 21, 1980) (closed electric blanket box on back seat of stolen vehicle - suppress)
- People v. Rodriguez, 102 Cal. App. 3d 510, 162 Cal. Rptr. 535 (1980), hearing granted June 19, 1980 (Cal. Sup. Ct.) (car trunk - suppress (Sanders dicta)
- People v. Gott, 160 Cal. Rptr. 307 (1979) (car trunk - suppress (dicta))
- People v. Haynes, 106 Cal. App. 3d 413, 165 Cal. Rptr. 138 (1980) (Sanders distinguished -- car trunk, exigent circumstances - admit)
- California v. Dalton, 24 Cal. 3d 850, 598 P.2d 467, 157 Cal. Rptr. 497, cert.denied, 445 U.S. 946 (1980) (metal boxes in car trunk - suppress)

- People v. Bullwinkle, 105 Cal. App. 3d 82, 164 Cal. Rptr. 163 (1980) (Sanders distinguished -- purse in possession of defendant; booking type search - admit)
- Bell v. Superior Court, 101 Cal. App. 3d 238, 161 Cal. Rptr. 455(1980) (athletic bag on floor behind driver's seat - suppress)
- People v. Flores, 100 Cal. App. 3d 221, 160 Cal. Rptr. 839 (1980) (Sanders distinguished -- shoulderbag at defendant's feet, exigent circumstances)
- People v. Diaz, 101 Cal. App. 3d 440, 161 Cal. Rptr. 645 (1980) (soft drink cup in car - admit)
- People v. Harris, 105 Cal. App. 3d 204, 164 Cal. Rptr. 296 (1980) (Sanders distinguished -- purse in defendant's possession - admit)
- People v. Chavers, 105 Cal. App. 3d 505, 164 Cal. Rptr. 449 (1980) (bag in glove compartment - suppress)
- People v. Jenkins, 106 Cal. App. 3d 731, 165 Cal. Rptr. 361 (1980) (blue balloon in house - admit -- Sanders distinguished; no expectation of privacy)
- People v. Fick, 107 Cal. App. 3d 892, 166 Cal. Rptr. 106 (1980) (grocery bag on front seat - admit)
- People v. Sims, 109 Cal. App. 3d 900, 167 Cal. Rptr. 506 (1980) (closed briefcase in car - suppress)
- People v. George, 110 Cal. App. 3d 528, 168 Cal. Rptr. 44 (1980) (vest on front seat - suppress)
- People v. Brown, ___ Cal. App. 3d ___, 168 Cal. Rptr. 806 (1980) (plastic bag - admit -- Sanders distinguished; contents discernable)

- People v. Scott, 95 Cal. App. 3d Supp. 8, 158 Cal. Rptr. 220 (1980) (cigarette box emitting odor of ether in car - admit)
- People v. Riegler, ___ Cal. App. 3d ___, 168 Cal. Rptr. 816 (1980) (wrapped and sealed packages searched by customs, followed by controlled delivery with warrant; warrant did not extend to car where package found - suppress)
- People v. Bundesen, 106 Cal. App. 3d 508, 165 Cal. Rptr. 174 (1980) (wallet taken from person - admit -- Sanders distinguished; booking search)

COLORADO:

- People v. Little, 598 P.2d 140 (Colo. 1979) (zippered travel bag in apartment - suppress)

DISTRICT OF COLUMBIA:

- In the Matter of B.K.C., 413 A.2d 894 (U.S. App. D.C. 1980) (briefcase in possession of companion - suppress (dicta))

FLORIDA:

- State v. Howell, 384 So. 2d 60 (Fla. Dist Ct. App. 1980) (briefcase in trunk - suppress)
- Cobb v. State, 378 So. 2d 82 (Fla. Dist Ct. App. 1979) (briefcase on rear floorboard - suppress)
- Ulesky v. State, 374 So. 2d 121 (Fla. Dist. Ct. App. 1979) (purse in vehicle - suppress)
- Haugland v. State, 374 So. 2d 1026 (Fla. Dist Ct. App. 1979) (luggage in trunk - suppress)
- Liles v. State, 375 So. 2d 1094 (Fla. Dist. Ct. App. 1979) (partially open satchel on front seat - suppress) (Cert. dismissed, 383 So. 2d 1203 (1980))

- Shafi v. State, 377 So. 2d 787 (Fla. Dist. Ct. App. 1979) (luggage in car - suppress)
- Sower v. State, 282 So. 2d 1257 (Fla. Dist. Ct. App. 1980) (lockers in trucks - suppress)

GEORGIA:

- Buday v. State, 150 Ga. App. 686, 258 S.E.2d 318 (1979) (luggage in trunk - suppress)
- Fears v. State, 152 Ga. App. 817, 264 S.E.2d 284 (1980) (tote bag left at sister's house and searched with her consent - admit)
- Gaston v. State, 270 S.E.2d 877 (Ga. App. 1980) (blue bag removed from car by defendant after accident and handed to bystander - suppress)

HAWAII:

- State v. Rosborough, 615 P.2d 84 (Haw. 1980) (footlocker at airport; matchbox on person - suppress)

ILLINOIS:

- People v. DeRusha, 74 Ill. App. 3d 641, 393 N.E.2d 619 (1979) (luggage in car - admit -- Sanders distinguished; car not immobilized)
- People v. Bayles, 76 Ill. App. 3d 843, 395 N.E.2d 663 (1979) (suitcase on ground near overturned car - suppress)
- People v. Rinaldo, 80 Ill. App. 3d 433, 399 N.E.2d 1027 (1980) (box in back of car - suppress)
- People v. Boyd, 41 Ill. Dec. 484, 407 N.E.2d 982 (1980) (cardboard box; defendant grabbed box from front seat while companion being arrested and locked it in trunk - suppress)

INDIANA:

- Bradford v. State, 401 N.E.2d 77 (Ind. App.1980) (purse in car - suppress)

IOWA:

- State v. Schrier, 283 N.W.2d 338 (Iowa 1979)(knapsack on floorboard near driver, contraband protruding - admit)

MAINE:

- State v. Blais, 416 A.2d 1253 (Me. 1980)(rolled up plastic bag in trunk - suppress)
- State v. Hassapelis, 404 A.2d 232 (Me. 1980)(gym bag on floor of vehicle - suppress, but harmless because merely cumulative)

MARYLAND:

- Pirner v. State, 45 Md. App. 50, 411 A.2d 135 (1980) (duffel bag under passenger seat - suppress)
- Manalansan v. State, 45 Md. App. 667, 415 A.2d 308 (1980)(bag on back seat - suppress)
- Liichow v. State, 419 A.2d 1041 (Md. 1980)(opaque plastic bag being carried from trailer home - suppress)

MASSACHUSETTS:

- Commonwealth v. Moon, 394 N.E.2d 984 (Mass. App. 1979), aff'd, ___ Mass. ___, 405 N.E.2d 947 (1980)(wallet on front seat, defendant not present - suppress)

MINNESOTA:

- State v. Filipi, 297 N.W.2d 275 (Minn. 1980)(duffel bag in trunk - suppress)
- State v. Cavegn, 294 N.W.2d 717 (Minn. 1980)(brown paper bag held by defendant inside zippered jacket - admit -- Sanders distinguished; incident to arrest)

MISSOURI:

- State v. Oberg, 602 S.W.2d 948 (Mo. App. 1980) (sealed metal containers being unloaded from van - suppress)

NEW JERSEY:

- State v. Hayburn, 171 N.J. Supre. 390, 409 A.2d 802 (1979)(car trunk - suppress)
- State v. Kahlon, 172 N.J. Super. 331, 411 A.2d 1178 (1980)(box in trunk - admit -- Sanders not retroactive; exigent circumstances present)
- State v. Pace, 171 N.J. Super. 240, 408 A.2d 808 (1979)(attache case in car trunk - suppress)
- Goings v. New Jersey, cert.denied, 49 U.S.L.W. 3220 (U.S. Oct. 7, 1980)(No. 79-1860)(from Appellate Division Superior Court)(shoulder bag impounded after defendant had opportunity to remove its contents - admit)
- Epp v. New Jersey, cert. denied, 49 U.S.L.W. 3221 (U.S. Oct. 7, 1980)(No. 79-1861)(from Appellate Division Superior Court)(luggage in car - admit -- Sanders not retroactive)
- Kaufman v. New Jersey, cert.denied, 49 U.S.L.W. 3265 (U.S. Oct. 14, 1980)(No. 80-216)(from Appellate Division Superior Court)(luggage in car - admit -- Sanders not retroactive)
- Hatami v. New Jersey, petition for certification denied mem., 82 N.J. 295, 412 A.2d 801 (1980), cert. denied, 49 U.S.L.W. 3421 (U.S. Dec. 9, 1980)(No. 80-562)(gym bag in car - admit --Sanders not retroactive)

NEW MEXICO:

- State v. Bramlett, 94 N.M. 263, 609 P.2d 345 (1980) (duffel bag and lunch box in car trunk - suppress)
- State v. Walker, 93 N.M. 769, 605 P.2d 1168 (1980) (suitcase in van - suppress)
- State v. Luna, 93 N.M. 773, 606 P.2d 183 (1980) (car search invalid but harmless under circumstances)

NEW YORK:

- People v. Spencer, 74 A.D.2d 77, 426 N.Y.S.2d 605 (1980) (sealed cardboard box in car trunk - suppress)
- People v. Belton, 50 N.Y.2d 447, 407 N.E.2d 420, 429 N.Y.S.2d 574 (1980) (zippered pockets of jacket on back seat - suppress), pet. for cert. filed, 49 U.S.L.W. 3292 (U.S. Sept. 2, 1980) (No. 80-328)
- People v. Howard, 50 N.Y.2d 583, 408 N.E.2d 908, 430 N.Y.S.2d 578 (1980) (vanity case thrown by running defendant - suppress), cert. denied, 49 U.S.L.W. 3403 (U.S. Dec. 2, 1980) (No. 80-543)

NORTH CAROLINA:

- State v. Gauldin, 44 N.C. App. 19, 259 S.E.2d 779 (1979), pet. for rehearing denied, 265 S.E.2d 399 (1980) (suitcase in back of car - suppress)
- State v. Cole, 46 N.C. App. 593, 265 S.E.2d 507 (1980) (large winter jacket stuffed with other clothing in car trunk - suppress)

OREGON:

- State v. Burns, 43 Or. App. 937, 607 P.2d 735 (1979) (wallet on defendant's person - admit -- Sanders distinguished; incident to arrest)

- State v. DeLong, 43 Or. App. 183, 602 P.2d 665 (1979) (camera case in car trunk - suppress)

PENNSYLVANIA:

- Commonwealth v. Timko, 417 A.2d 620 (Pa. 1980) (zipperred valise in van - suppress)

RHODE ISLAND:

- State v. Burke, 415 A.2d 1314 (R.I. 1980) (per curiam, mem.) (luggage in car - suppress)

TEXAS:

- Nastu v. State, 589 S.W.2d 434 (Tex. Cr. App. 1979) (luggage in car - admit -- Sanders not retroactive)
- Araj v. State, 592 S.W.2d 603 (Tex. Cr. App. 1980) (attache case in back of car - suppress)

WASHINGTON:

- State v. Marcum, 24 Wash. App. 975, 601 P.2d 975 (1979) (athletic bag in trunk - suppress)
- State v. Grundy, 25 Wash. App. 411, 607 P.2d 1235 (1980) (footlocker next to car - suppress)

WEST VIRGINIA:

- State v. Tomey, 259 S.E.2d 16 (W. Va. 1979) (suitcase on back seat - suppress)

WISCONSIN:

- State v. Prober, 297 N.W.2d 1 (Wis. 1980) (purse in car trunk - suppress)

FEDERAL COURTS - SUPPLEMENT

- United States v. Benson, 631 F.2d 1336 (8th Cir. 1980) (unlocked tote bag on passenger seat - suppress)

Respectfully submitted,

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Dated: December 29, 1980
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-5677

ORIGINAL COPY

DAVID WENDELL RUGGLES,

Petitioner,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

ON MOTION FOR LEAVE TO FILE AND
PETITION FOR WRIT OF CERTIORARI

RESPONSE OF RESPONDENT IN OPPOSITION

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RESPONSE OF RESPONDENT IN OPPOSITION

QUESTION PRESENTED

Whether the warrantless search of the contents of an unlocked briefcase found in the trunk of petitioner's car following his arrest was proper under this Court's holding in Arkansas v. Sanders (1979) 442 U.S. 753 61 L.Ed.2d 235, 99 S.Ct. 2586?

JURSIDICTION

The jurisdiction of this Court is invoked pursuant to Title 28, United States Code section 1257(3).

THE PROCEEDINGS BELOW

Petitioner David Wendell Ruggles was charged in a two-count information filed by the District Attorney of

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Los Angeles County with (1) robbery (Cal. Pen. Code, § 211) alleging use of a firearm in the commission of the offense (Cal. Pen. Code, §§ 12022.5, 1203.06) and (2) possession of a firearm by an ex-felon (Cal. Pen. Code, § 12021). The information was subsequently amended to reflect six prior convictions and the case was consolidated with a second case in which a single count was charged against petitioner Ruggles. Petitioner pleaded not guilty, denied the priors and filed a motion pursuant to California Penal Code section 1538.5 to suppress evidence which was obtained from a search of the vehicle he was driving at the time of his arrest.

After denial of petitioner's motion to suppress the evidence, he entered a plea of guilty on the first count of the amended information (robbery and use of a weapon) and admitted three of the prior felony convictions charged. On motion of the district attorney, the second count (possession of a firearm by an ex-felon) and the single count in the second case were dismissed. Probation was denied and petitioner was sentenced to state prison for a term of nine years.

Petitioner thereafter timely pursued an appeal to the Court of Appeal for the Second District of California for review of the denial of the motion to suppress evidence under California Penal Code section 1538.5. The judgment was affirmed on appeal in a decision filed June 16, 1980. (Petn. for Writ of Cert., Appen. B.) Petitioner's petition for hearing in the California Supreme Court was denied on August 13, 1980. (Petn. for Writ of Cert., Appen. A.)

This Petition for Writ of Certiorari seeks review of the order of the Court of Appeal of California, Second Appellate District, dated June 16, 1980.

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STATEMENT OF FACTS
(Facts Relating to the Motion to Suppress)

The facts relating to the motion to suppress evidence were accurately summarized by the California Court of Appeal at pages 3 through 8 of its opinion filed on June 16, 1980 (see Petn. for Writ of Cert., Appen. B) and are reproduced below:

In July 1978 there was a robbery at the Nutel Motel and Ruggles, who was identified by Mr. John Carragher. the manager, was subsequently apprehended by police officers on suspicion of this crime. Defendant's arrest came about as the result of an investigation by Officer Robert McSeveney of the Los Angeles Police Department.

At the 1538.5 hearing, Officer McSeveney testified that in November of 1978 he received information from Sergeant Morosky that Ruggles had participated in various armed robberies including the robbery with an accomplice of a motel in Los Angeles; that Ruggles was on parole for armed robbery; that he lived in San Pedro and drove a black over red Mercury Montego; and that he was a Caucasian male approximately 39 years old, 6 feet tall and weighed around 200 pounds. Officer McSeveney verified this information, which was given to Morosky by an informant, by checking various sources including the police department's records which disclosed that in several robberies Ruggles had posed as a law enforcement officer showing a badge. He also learned that a few days before the robbery of the Nutel Motel, Ruggles was seen in the vicinity posing as a law enforcement officer, and the perpetrator of that robbery had shown a badge, represented that he was with some state department, and had used handcuffs on the victim.

McSeveney, who concluded that Ruggles had committed the robbery of the Nutel Motel, obtained defendant's driver's license

photograph and constructed a showup card including that photograph among six other pictures. Mr. Carragher, who had clearly seen defendant at least twice before the robbery posing as a narcotics agent, identified the person in the driver's license photograph as the robber. Although the officer believed that he then had probable cause to arrest defendant Ruggles, he refrained because he and other officers were still attempting to identify the second suspect involved in the robbery. Police maintained a helicopter surveillance of defendant Ruggles at his San Pedro residence in an attempt to identify the second suspect.

Finally, on January 2, 1979, Sergeant Morosky told Officer McSeveney that defendant Ruggles and a partner would commit a major robbery probably the next day. The defendant was to meet his partner at 8 a.m. on Reseda Boulevard in the San Fernando Valley and they would then proceed to rob a jewelry store possibly in Santa Barbara. The informant said two handguns would be used, one of them a blue steel automatic, and that Ruggles would probably carry one weapon in the small of his back and the second weapon in a briefcase. Officer McSeveney conveyed this information to the surveillance team and also told them that the defendant had been involved in a shoot out in Orange County, that he had multiple prior felony convictions and was to be considered armed and dangerous, and that the team should attempt to stop and arrest Ruggles if it appeared he was leaving Los Angeles County.

Officer Brooks of the surveillance team testified that he received the foregoing information together with a description of defendant Ruggles, the car he was driving, and its license number. As Officer Brooks pulled onto Reseda Boulevard on the morning of January 3, 1979, he saw defendant Ruggles' car and followed him. Defendant parked on the north side of Erwin, got

out of the car and surveyed the street, then opened the trunk and removed a brown attache case which he took with him into an apartment building complex. About 15 minutes later, defendant Ruggles returned to the car, surveyed the street again, then opened the trunk and replaced the brown briefcase therein. He closed the trunk, got into the car, drove down Reseda Boulevard toward the freeway, and finally got onto the freeway and turned westbound. The car, driven by Officer Brooks and other police surveillance units, followed Ruggles until it appeared that he was leaving the county and then the officers decided to stop and arrest him on suspicion of robbery.

A black and white police car with red lights turned on pulled up behind defendant's car when Ruggles stopped his car along the center divider. The police car pulled up directly behind him while Officer Brooks pulled his police car in front of Ruggles' car. Defendant Ruggles immediately got out of his car as other officers carrying guns approached. Defendant complied with their request to raise his hands. He was then ordered to lay down prone, was handcuffed and patted down, and was told that he was under arrest.

As Officer Brooks approached defendant Ruggles, he peered into the vehicle through the open window on the driver's side and saw on the front seat a small hand-held police call scanner. In plain view on the back seat was a syringe and needle and two little vials of the type the officer recognized as those customarily containing narcotics. In the opinion of the officer, the syringe and needle were a "hype" kit and the vial and bottles contained some type of controlled substance. Defendant Ruggles, however, did not appear to be under the influence of drugs or narcotics.

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The officer took the car keys from defendant Ruggles' hand and opened the trunk. In the trunk he found a large police call scanner standing next to the brown briefcase. The officer took the unlocked briefcase out of the trunk, opened it and found inside a holster, a sap, handcuffs, some gloves, a flashlight and a bandana together with an unzipped bag similar to a shaving kit. He found another gun in the unzipped bag. The officer also opened a couple of other bags which he found in the trunk and there he found a three-foot sledge hammer, miscellaneous clothes and a brown cap. In the trunk there was a raincoat, and some Halloween-type masks with tape over the eye holes, and a scanner company manual entitled "Police Frequencies."

Defendant testified on his own behalf that when he noticed a police car behind him on the freeway that morning, he promptly stopped and got out of his car. An officer ordered him to lie down on the ground or he would "blow his fucking head off." When the defendant complied, officers rushed in and grabbed his arms and one of the officers holding a shotgun put his foot on defendant's neck and held him down. While the defendant was still lying down, an officer asked if he could look in his car but the defendant refused. The officers then took the keys from the defendant's hand and opened the trunk.

ARGUMENT

THE CASE PRESENTS NO SUBSTANTIAL QUESTION NOT PREVIOUSLY DECIDED BY THIS COURT

Relying on Arkansas v. Sanders (1979) 442 U.S. 753, 61 L.Ed.2d 235, 99 S.Ct. 2586, petitioner contends the warrantless search of the contents of the unlocked briefcase found in the trunk of the car was invalid. Petitioner argues that the California Court of Appeal ignored this Court's holding in Arkansas v. Sanders, supra, in concluding that the search of

the unlocked briefcase was valid. (Petn. for Writ of Cert., pp. 7-12.) Respondent submits that the California Court of Appeal properly followed this Court's holding in Arkansas v. Sanders in concluding that the search of the briefcase was proper.

The California Court of Appeal below, which cites this Court's opinion in Arkansas v. Sanders in its opinion, concluded that the warrantless search of the briefcase was proper in view of the existence of exigent circumstances. (See Petn. for Writ of Cert., Appen. B, pp. 13-14.) This Court recognized in Arkansas v. Sanders that "special exigencies" may justify the warrantless search of luggage seized from a car following a lawful arrest. (Arkansas v. Sanders, supra, 442 U.S. at p. 763, fn. 11.) Petitioner argues that there are no exigent circumstances in the instant case to justify the warrantless search of the unlocked briefcase. (Petn. for Writ of Cert., pp. 7-12.) Therefore, the only issue presented in this case is a factual one of whether the record supports the conclusion that the officers were justified in opening the briefcase without a warrant in view of the existence of exigent circumstances. Thus, the instant petition fails to present a substantial legal question not previously considered by this Court. (See Arkansas v. Sanders, supra, at p. 753.)

Moreover, the search of the contents of the briefcase in this case can be justified based on this Court's acknowledgment in Arkansas v. Sanders that not all containers removed from a vehicle following a lawful arrest deserve the full protection of the Fourth Amendment. (Arkansas v. Sanders, supra, 442 U.S. at pp. 764-765, fn. 13.) Some containers, such as the briefcase in this case, cannot support a reasonable expectation of privacy

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because its contents could be discerned from its outward appearance. (Id.)

Finally, the search of the briefcase does not present a substantial federal question not previously decided by this Court since the search can be justified on an accelerated booking search theory under this court's decision in Bullwinkle v. California, filed November 17, 1980, in United States Supreme Court Nos. 80-5456 and 80-5263. (See 49 U.S.L.Week 3371 (Jan. 6, 1981).)

A. The Existence of Exigent Circumstances

In Arkansas v. Sanders this Court ordered suppressed the contents of a suitcase seized from the trunk of a taxicab following a lawful arrest. In Sanders the police had information from an informant that Sanders was going to arrive at an airport carrying a green suitcase containing marijuana. When Sanders arrived at the airport, he picked up a green suitcase, placed it in the trunk of a taxicab, and entered the taxicab with another individual. The police subsequently stopped the taxicab, opened the suitcase in the trunk, and discovered the marijuana. In holding that United States v. Chadwick (1977) 433 U.S. 1, 53 L.Ed.2d 538, 97 S.Ct. 2476, controlled the case, the court stated:

> "The only question, therefore, is whether the police, rather than immediately searching the suitcase without a warrant, should have taken it, along with respondent, to the police station and there obtained a warrant for the search. A lawful search of luggage generally may be performed only pursuant to a warrant. In Chadwick, we declined an invitation to extend the Carroll exception to all searches of luggage, noting that neither of the two policies supporting and

warrantless searches of automobiles applies to luggage. Here, as in Chadwick, the officers had seized the luggage and had it exclusively within their control at the time of the search. Consequently, 'there was not the slightest danger that [the luggage] or its contents could have been removed before a valid search warrant could be obtained.' 433 U.S., at 13. And, as we observed in that case, luggage is a common repository for one's personal effects, and therefore is inevitably associated with the expectation of privacy. Ibid."

(Arkansas v. Sanders, supra, 442 U.S. at p. 762.)

Thus, the Sanders court suppressed the contents of the warrantless search of the suitcase from the trunk of the taxicab following a lawful arrest.

The Sanders court acknowledged, however, that exigent circumstances may justify a warrantless search of luggage taken from a vehicle following a lawful arrest. In footnote 11, the Sanders court stated:

"There may be cases in which the special exigencies of the situation would justify the warrantless search of a suitcase. Cf. Cady v. Dombrowski, 413 U.S. 433 (1973) (police had reason to suspect automobile trunk contained a weapon). Generally, however, such exigencies will depend upon the probable contents of the luggage and the suspect's access to those contents -- not upon whether the luggage is taken from an automobile. In the present case the State has conceded that there were no special exigencies. . . .

"Nor do we consider the constitutionality of searches of luggage incident to the arrest of its possessor. See, e.g., United States v. Robinson,

414 U.S. 218 (1973). The State has not argued that respondent's suitcase was searched incident to his arrest, and it appears that the bag was not within his 'immediate control' at the time of the search."

(Arkansas v. Sanders, supra, 442 U.S. at pp. 763-764.)

In the instant case, the Court of Appeal below concluded that the officers were justified in searching the contents of the briefcase without a warrant in view of the existence of exigent circumstances. (See Petn. for Writ of Cert., Appen. B, pp. 13-14.) Respondent submits the record in this case supports such a conclusion. The officers knew that petitioner Ruggles was planning to commit a robbery with a second suspect and that petitioner Ruggles had two handguns in his possession -- one which he carried in the brown attache case in the trunk of the car. Petitioner's car was stopped on the open highway, next to the center divider with a possible confederate waiting to remove the evidence. The briefcase, like the car itself, was mobile and capable of being easily lost or stolen. Also, the "posting of a guard" in the center of the freeway to await a search warrant was highly impractical. Thus, the record amply supports the conclusion that the warrantless search of the briefcase was proper in view of the existence of the exigent circumstances. (See United States v. White (7th Cir. 1979) 607 F.2d 203.)

Since the only issue presented in this case is a factual one of whether the record supports the conclusion that the officers were justified in opening the briefcase without a warrant in view of the exigent circumstances, and does not present a substantial legal question not previously considered by this Court, the Petition for Writ of Certiorari should be denied.

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B. No Reasonable Expectation of Privacy

This Court also made clear in Sanders that warrantless searches of packages and containers removed from a vehicle following a lawful arrest are not always precluded. In footnote 11 the Sanders court stated:

> "Not all containers and packages found by police during the course of a search will deserve the full protection of the Fourth Amendment. Thus, some containers (for example a kit of burglar tools or a gun case) by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance. Similarly, in some cases the contents of a package will be open to 'plain view,' thereby obviating the need for a warrant. See Harris v. United States, 390 U.S. 234, 236 (1968) (per curiam). There will be difficulties in determining which parcels taken from an automobile require a warrant for their search and which do not. Our decision in this case means only that a warrant generally is required before personal luggage can be searched and that the extent to which the Fourth Amendment applies to containers and other parcels depends not at all upon whether they are seized from an automobile."
> (Arkansas v. Sanders, supra, 442 U.S. at pp. 764-765.)

Thus, as the Sanders court noted, some containers, such as a kit of burglar tools or a gun case, cannot support a reasonable expectation of privacy because their contents may be discerned from their outward appearance. A warrant would, therefore, not be required for these items or any such items falling into the plain view of the police.

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In the instant case, the police had been told by their corroborated informant that petitioner nearly always carried at least one of the weapons he used in his numerous robberies in a brown briefcase. The police observed petitioner remove a brown briefcase from his trunk, visit an apartment complex for 10 to 15 minutes, return again, and place the briefcase in the trunk. (RT 13-14, 16, 24, 40, 43-44.) When Officer Brooks opened the trunk, the brown attache case was sitting right next to a Bearcat Scanner. A manual dealing with police calls was also in plain view in the trunk, not in a locked suitcase. (RT 49-50, 53-54.) Respondent, therefore, submits the totality of the facts and circumstances make it abundantly clear that petitioner's brown attache case could not, in any way, support a "reasonable expectation of privacy." Petitioner's brown attache case located next to the scanner, was, in effect, a virtual gun case not requiring a warrant. (See Arkansas v. Sanders, supra, 442 U.S. at pp. 764-765, fn. 13.)

C. Accelerated Booking Search Theory

Bullwinkle v. California, filed November 17, 1980, in United States Supreme Court Nos. 80-5456 and 80-5263 (see 49 U.S.L.Week 3371) involved an appeal challenging the conclusion in People v. Bullwinkle, 105 Cal.App.3d 82, that an "accelerated booking search" of a purse of a felonee-arrestee is constitutional despite this Court's holding in United States v. Chadwick, supra. This Court dismissed the appeal "for want of a substantial federal question." (49 U.S.L.Week 3371.) Dismissal of appeals for want of a substantial federal question constitutes a decision "on the merits" under Hicks v. Miranda (1975) 422 U.S. 332, 344-345.)

The search of the briefcase in this case can be justified on an accelerated booking search theory. The

California Court of Appeal below relied upon People v. Bullwinkle, supra, in concluding that the search of the briefcase could be justified on an accelerated booking search theory. (See Petn. for Writ of Cert., Appen. B, pp. 15-16.) Since the search of the briefcase can be justified on an accelerated booking search theory, the Petition for Writ of Certiorari fails to present a substantial legal question not previously considered by this Court. (Bullwinkle v. California, filed Nov. 17, 1980, in U.S. Supreme Ct. Nos. 80-5456, 80-5263 (see 49 U.S.L.Week 3371).)

CONCLUSION

Based on the foregoing arguments, respondent respectfully urges that the Petition for Writ of Certiorari be denied.

DATED: January 26, 1981.

Respectfully submitted,

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